IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIRST DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 2665 of 2005

Between:

1. Ambati Madhu Mohan Krishna, S/o Ranga Rao, Chairman and Managing Director, M/s Shanthi Housing and Estate Private Ltd, Atmakur Village, Mangalgiri Mandal, Guntur Disrict.
2. Bethapudi Venkat Rao, S/o Musalaiah, r/o Atmakur village, Mangalgiri Mandal, Guntur District.
3. Linga Samba Murthy, s/o Laxmaiah, r/o Atmakur village, Mangalgiri Mandal, Guntur District.
4. Chennamsetti Prasad Rao, s/o Subba Rao, M/s Santhi Housing and Estate Pvt. Ltd, Atmakur Village, Mangalgiri Mandal, Guntur District.

..... PETITIONERS

AND

1 Revenue Divisional Officer, Guntur , Guntur District.
2 Mandal Revenue Officer, Mangalagiri Mandal, Guntur District.
3 Pachava Subha Ratnam, W/o Vemaiah, R/o Piduguralla Village and Mandal, Guntur District.
4 Pachava Swarajya Laxmi, D/o Vemaiah, R/o Piduguralla Village and Mandal, Guntur District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari or any other appropriate writ and quash the order of the 1st respondent contained in Appeal Case No. 4513/2004-F dated
4-2-2005 and grant such other relief as it deems fit in the circumstances of the case.

Counsel for the Petitioner: MR.V.VENKATARAMANA

Counsel for the Respondents 1 & 2: GP FOR REVENUE

Counsel for the Respondents 3 & 4: Mr. M.Subbareddy

The Court made the following:

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ORDER:

Order dated 04-02-2005 of the Revenue Divisional Officer, Guntur (first respondent) allowing the Appeal Case No.4513/2004-F, filed by respondents 3 & 4, questioning the order of the Mandal Revenue Officer (second respondent) mutating the names of petitioners in the revenue records pertaining to Ac.7-08cts in S.No.373, 373/2 of Atmakur village, Mangalagiri Mandal, and issuing pattadar passbooks and title deeds to them on 05-02-1997 is the subject matter of this petition.

2. The case of the petitioners is that they having purchased land of Ac.7-08cts in S.Nos.373 and 373/2 of Atmakur village from Bommu Narasa Reddy, Bommu Srinivasa Reddy and Bommu Raji Reddy under seven registered sale deeds bearing document Nos.3400, 3393, 606, 2219, 2130, 2131 and 2121 of 1995 and were put in possession thereof and had applied for mutation of their names in their favour and after issuance of pattadar passbooks and title deeds on 05-02-1997 respondents 3 and 4, claiming to have acquired title to the said land under registered document Nos.1158 and 1159 of 2003 dated 05-03-2003 from the legal heirs of Ongole Srinivasa Rao, sought deletion of their names by preferring an appeal before the first respondent against the order of the second respondent issuing passbooks and title deeds to them.

3. Second respondent filed his counter affidavit on behalf of respondents 1 and 2 contending that the records available in his office do not disclose the petitioners making an application for mutation of their names under Section 4 of the A.P. Rights in Land and Pattadar Passbooks Act, 1971 (the Act), for issuance of pattadar passbooks and title deeds, after purchasing the land in 1995-96 from the vendors, and as per the records available for the year 1995-96 it is seen that the Village Administrative Officer on the basis of the registered documents in favour of the petitioners, entered the names of the petitioners in the adangal for the fasli year 1405 though he is not competent to change the entries in the records, and based on the entries, illegally made by the Village Administrative Officer only, pattadar

passbooks and title deeds were issued to the petitioners and since respondents 3 and 4 claim to have purchased the land from the legal heirs of the original pattadar, after due notice to the petitioners, their names were deleted and the names of respondents 3 and 4 were incorporated in 1-B Register and W.P.No.13516 of 2004 filed by the petitioners, challenging the said mutation, was dismissed by a learned single Judge, but was allowed in an appeal preferred by the petitioners in W.A.No.1602 of 2004 by giving liberty to respondents 3 and 4 to file an appeal, challenging the proceedings in their favour, and consequently on an appeal filed by respondents 3 and 4, first respondent, after giving notice to the petitioners, passed the order impugned setting aside the order made by the 2nd respondent in their favour.

4. Third respondent filed her counter affidavit on behalf of respondents 3 and 4 contending that she purchased Acs.5-43 cents of Atmakur village under registered sale deed dated
05-03-2003 from Ongole Satya Bhanu Abhaya Kumar, Valicheti Mrudhula Padma Saravana, Rallapalli Tirumala Saila Sutha and that fourth respondent, her daughter purchased Acs.2-35 cents in S.No.373/2 of Atmakur village under a registered sale deed dated 05-03-2003 from the same vendors, who are the legal heirs of Ongole Srinivasa Rao, the lawful owner of those lands, and subsequent to the death of Ongole Saraswati Devi W/o Srinivasa Rao, her children who became entitled to that land were issued pattadar passbooks and title deeds in the name of Ongole Satya Bhanu Abhaya Kumar and after their purchase only they came to know that petitioners are in illegal possession of the lands purchased by them and got mutated their names and obtained title deeds and since petitioners claim to have purchased the land from persons who have no title, they cannot acquire title to the land and hence are not entitled to passbooks and title deeds.

5. Heard both sides.

6. The main contention of the learned counsel for the petitioners is that since the petitioners purchased the land under registered sale deeds in 1995-96 and since respondents 3 and 4 claim title to the property by virtue of the sale deeds in 2003, long subsequent of purchase by the petitioners, first respondent ordering deletion of the names of the petitioners and incorporation of the names of respondents 3 and 4,

several years after passbooks were issued in favour of the petitioners is improper. The learned Government Pleader supported impugned order. The contention of the learned counsel for respondents 3 and 4 is that since petitioners purchased the property from the holder of an agreement allegedly executed by the real owner, but not from the real owner and since respondents 3 and 4 purchased the property from the heirs of the real owner after the death of the real owner they have superior title over petitioners and so there are no grounds to interfere with the order impugned. It is also his contention that since the petitioners did not come to Court with clean hands, as they suppressed the factum of filing an earlier writ petition, they are not entitled to any relief.

7. It is no doubt true that petitioners did not make any specific reference to the filing of an earlier writ petition in the affidavit filed in support of the application, but they did file a copy of the order in W.A.No.1602 of 2004 with the writ petition. So, it cannot be said that petitioners suppressed the earlier proceedings filed by them. The order in W.A.No.1602 of 2004 produced by the petitioner shows that the Court while allowing the appeal preferred by the petitioners, held that if an appeal is preferred by the respondents
3 and 4 the same can be considered, on merits, uninfluenced by the observations made in that order. So, first respondent entertaining the appeal against the order issuing the passbooks in the name of the petitioners cannot be said to be irregular, in spite of the fact that it was preferred several years after the issuance of the passbooks in favour of the petitioners.

8. From a reading of the counter affidavit filed on behalf of the respondents 3 and 4 it is seen that they are not in possession of the land purchased by them, and that they clearly admit the possession of petitioners thereon. It is the case of respondents
3 and 4 that since petitioners purchased the property only from holders of an agreement to sell executed by the original owner, but not from the original owner, and since agreement of sale does not convey title to the agreement holders, petitioners cannot be said to have acquired title to the property, and since respondents 3 and 4 purchased the property from the heirs of the original owner they only have title to the property. I do not wish to go into the question of title, because this is a petition questioning the order passed by the first respondent under the provisions of the Act in which title to property cannot be decided.

9. Passbooks were issued and mutation of the names of petitioners, admittedly, was

effected in 1995-96, when respondents 3 and 4 did not have any right in the property, because they claim to have purchased the property in 2003 only. Even assuming that petitioners obtained mutation and passbooks clandestinely in 1995-96, persons aggrieved thereby can only be the real owners i.e. Ongole Srinivasa Rao, or his heirs but not respondents
3 and 4. So, they, not being the parties aggrieved, have no locus standi to question the order of the mutation or granting of title deeds and pattadar passbooks in favour of the petitioners in
1995-96. Their purchase of property several years after 1995-96 does not make them parties aggrieved to have a right of appeal to question the mutation in 1995-96. Question as to who has better title to the property can be resolved only by a Civil Court. In fact, Section 8(2) of the Act reads-

> "(2) If any person is aggrieved as to any rights of which he is in possession by an entry made in any record of rights he may institute a suit against any person denying or interested to deny his title to such right for declaration of his right under Chapter VI of the Specific Relief Act, 1963 (Central Act 47 of 1963) and the entry in the record of rights shall be amended in accordance with any such declaration."

Therefore, in my considered opinion, the remedy of respondents
3 and 4 if any is to file a suit for declaration of their title to the property purchased by them from the heirs of Srinivasarao, but they cannot question the pattadar passbooks and title deeds issued in favour of the petitioners, granted to them several years prior to their purchase. Why their vendors did not object to issuance of passbooks in favour of the petitioners is also not stated in the counter affidavit.

10. For the above reasons first respondent erred in allowing the appeal filed by respondents 3 and 4 without considering the question of their locus standi and ought to have directed them to approach Civil Court to establish their title.

11. For the above reasons, the writ petition is allowed. Rule Nisi is made absolute. Order impugned is set aside. No costs.

(C.Y.Somayajulu, J.)

Date: 21-04-2005

Cvrk

THAT RULE NISI HAS BEEN MADE ABSOLUTE AS ABOVE.

WITNESS THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE ON THIS THURSDAY, THE TWENTY FIRST DAY OF APRIL, TWO THOUSAND AND FIVE.

..... REGISTRAR

To

1. Revenue Divisional Officer, Guntur , Guntur District.

2. Mandal Revenue Officer, Mangalagiri Mandal, Guntur District.

3. 2 copies to the Government Pleader for Revenue, High Court Buildings, Hyderabad. (OUT)

4. 2 CD copies

5. 1 CC to MR.VENKATARAMANA